

TAB

PROTECTION OF INTELLIGENCE DATA

The National Security Act of 1947 as amended enumerates the duties of the Central Intelligence Agency at Section 102 (d) as follows:

Section 102 . . .

(d) For the purpose of coordinating the intelligence activities of the several Government departments and agencies in the interest of national security, it shall be the duty of the Agency, under the direction of the National Security Council--

(1) to advise the National Security Council in matters concerning such intelligence activities of the Government departments and agencies as relate to national security;

(2) to make recommendations to the National Security Council for the coordination of such intelligence activities of the departments and agencies of the Government as relate to the national security;

(3) to correlate and evaluate intelligence relating to the national security, and provide for the appropriate dissemination of such intelligence within the Government using where appropriate existing agencies and facilities: Provided, That the Agency shall have no police, subpoena, law-enforcement powers, or internal-security functions: Provided further, That the departments and other agencies of the Government shall continue to collect, evaluate, correlate, and disseminate departmental intelligence: And provided further, That the Director of Central Intelligence shall be responsible for protecting intelligence sources and methods from unauthorized disclosure;

(4) to perform, for the benefit of the existing intelligence agencies, such additional services of common concern as the National Security Council determines can be more efficiently accomplished centrally;

(5) to perform such other functions and duties related to intelligence affecting the national security as the National Security Council may from time to time direct.
(Underscoring Added)

Two years later the Congress reaffirmed the responsibility of the Director in the Central Intelligence Agency Act of 1949 and provided specific exemptions as follows:

Section 6. In the interests of the security of the foreign intelligence activities of the United States and in order further to implement the proviso of section 102 (d) (3) of the National Security Act of 1947 (Public Law 253, Eightieth Congress, first session) that the Director of Central Intelligence shall be responsible for protecting intelligence sources and methods from unauthorized disclosure, the Agency shall be exempted from the provisions of sections 1 and 2, chapter 795 of the Act of August 28, 1935 (49 Stat. 956, 957; 5 U.S.C. 654), and the provisions of any other law which require the publication or disclosure of the organization, functions, names, official titles, salaries, or numbers of personnel employed by the Agency: Provided, That in furtherance of this section, the Director of the Bureau of the Budget shall make no reports to the Congress in connection with the Agency under section 607, title VI, chapter 212 of the Act of June 30, 1945, as amended (5 U.S.C. 947 (b)).

NOTES ON SECTION 201(c)

NON-REVIEWABILITY OF DETERMINATIONS

Section 10 of the Administrative Procedure Act provides that except insofar as (1) statutes preclude judicial review or (2) agency action is by law committed to agency discretion, final agency action shall be subject to judicial review.¹

To preclude the possibility of unauthorized disclosures, the Atomic Energy Act provides that where Restricted Data are involved determinations of the Commission will not be subject to judicial review.² Federal courts have upheld the constitutionality of this provision³ and in deference thereto have consistently refused to review such determinations.⁴

There are similar provisions in other acts, such as that found in the Foreign Claims Settlement Act of 1949,⁵ which specifically proscribe review and which have been honored by the courts.⁶

¹ 5 U.S.C. 1009(c)

² 42 U.S.C. 2231

³ Pauling v. McElroy, 164 F. Supp. 390 (D.D.C. 1958)

⁴ United Electrical, Radio & Machine Workers, CIO v. Lilienthal, 34 F. Supp. 640 (D.D.C. 1949)

⁵ 22 U.S.C. 1623(h)

⁶ DeVegvar v. Gilliland, 228 F. 2d 640 (D.C. Cir. 1955), cert. denied, 352 U.S. 994 (1956)

Indeed, such exceptions to the Administrative Procedure Act are most apt to be found in statutes like the Agency's proposed Retirement Act which provide pensions, bounties, and other claims against the public treasury.⁷ Thus, section 211(a) of the Veterans' Benefits Act of 1957 provides that "...the decisions of the Administrator on any question of law or fact concerning a claim for benefits or payments under any law administered by the Veterans' Administration shall be final and conclusive and no other official or any court of the United States shall have power or jurisdiction to review any such decision."⁸ Once again, the courts have held this constitutional⁹ and have respected its mandate.¹⁰

⁷ Jaffe, The Right to Judicial Review, 71 Harv. L. Rev. 769, 795 (1958)

⁸ 38 U.S.C. 211(a)

⁹ Strong v United States, 155 F. Supp. 468 (D. Mass. 1957)

¹⁰ Brewer v United States, 117 F. Supp. 842 (E. D. Tenn. 1954)

RAPID EROSION OF OUR NATIONAL INTELLIGENCE EFFORT

(Mr. MAHON asked and was given permission to address the House for 1 minute and to revise and extend his remarks and include extraneous matter.)

Mr. MAHON. Mr. Speaker, I shall ask the President, the Vice President, and the Speaker of the House to undertake to coordinate a course of action for the purpose of halting the rapid erosion of our national intelligence effort. The present situation is outrageous and intolerable.

There has been talk of an intelligence gap. There is an intelligence gap. The gap is in the intelligence of those who are daily revealing the secrets of the intelligence operations of the U.S. Government. In recent weeks there has been a great excess of talk about the procedures of our intelligence apparatus.

Critics have made public statements on matters which should never be discussed in public. The administration has mistakenly allowed itself to be goaded into revealing information detrimental to our best interests.

Along with many other Americans I am tired of these demonstrations of bad judgment. Every day some high ranking intelligence officer is quoted in the newspapers on one subject or another. These are men who, from the standpoint of the general public, should neither be seen nor heard. A passion for anonymity is an integral part of their jobs. Members of both the legislative and executive branches have publicly discussed matters which should only be discussed behind closed doors. Headlines are not so precious as to warrant jeopardizing our national security.

The deterioration of secrecy in regard to our intelligence-gathering techniques began in 1960 when a U-2 plane was shot down over Russia. Neither the executive branch nor the legislative branch is blameless in revealing secrets. Both Democrats and Republicans must share the blame. The question, however, is not so much who is to blame for the past, but where do we go from here?

To be successful, intelligence activities must be secret. To let the enemy know just how many of his secrets we know and just which ones we do not know, gives him a priceless advantage. Today's

headline may cost the lives of the human sources of information. The enemy can find our intelligence sources much more easily when he knows what we have found out. This knowledge helps to pinpoint the location of intelligence activities, and once knowing the location, the discovery of the means is much easier and as a result intelligence sources dry up.

Our immaturity and indiscretion in these constant disclosures is making us the laughingstock of the world. Officials in Moscow, Peking, and Havana must applaud our stupidity in announcing publicly facts which they would gladly spend huge sums of money endeavoring to obtain. Responsibility on our part is urgently required. Let us be silent with respect to these sensitive matters.

Mr. John McCone, as Director of CIA, is charged with protection of intelligence sources. Public Law 253, 80th Congress, 1st session, states:

And provided further, That the Director of Central Intelligence shall be responsible for protecting intelligence sources and methods from unauthorized disclosure.

I call on him to fully carry out the difficult and important duties of his office in this respect. A governmentwide coordination of effort is required.

The American people are interested in our intelligence activities. They are interested in all phases of the workings of their Government and their curiosities are aroused by the aura of mystery and adventure which surrounds the intelligence business. But we are not playing games. Our national survival to a great extent depends upon our knowledge of our enemies' activities. The price we pay for the luxury of public disclosure of intelligence activities is the further erosion of our capabilities in this field. It is difficult enough to obtain information from closed Communist societies. The American people, the press, and the officials of the executive and legislative branches of the Government must stop making a most difficult task more difficult.

There is room for plenty of discussion and criticism of our Government without revealing sensitive intelligence information.

May 10

mittee on House Administration may sit today during general debate.

The SPEAKER. Is there objection to the request of the gentleman from Missouri?

There was no objection.

DEPARTMENT OF AGRICULTURE AND FARM CREDIT ADMINISTRA- TION APPROPRIATION BILL, 1961

The SPEAKER. The question is on the motion of the gentleman from Mississippi (Mr. Whitten).

The motion was agreed to.

Accordingly, the House resolved itself into the Committee of the Whole House on the State of the Union for the consideration of the bill (H.R. 12117) making appropriations for the Department of Agriculture and Farm Credit Administration for the fiscal year ending June 30, 1961, and for other purposes, with Mr. STANLEY in the chair.

The Clerk read the title of the bill.

By unanimous consent, the first reading of the bill was dispensed with.

The CHAIRMAN. Under the unanimous consent agreement, the gentleman from Mississippi (Mr. Whitten) will be recognized for 3 hours and the gentleman from Minnesota (Mr. Armstrong) will be recognized for 3 hours.

The Chair recognizes the gentleman from Mississippi (Mr. Whitten).

Mr. WHITTEN. Mr. Chairman, I need 15 minutes to the gentleman from Missouri (Mr. Cannon).

The CHAIRMAN. Mr. Chairman, on May 8, 1945, the Soviet Government captured, 1,300 miles inside the boundaries of the Russian Empire, an American plane, operated by an American pilot, under the direction and control of the Central Intelligence Agency, and is now holding both the plane and the pilot.

The plane was on an espionage mission authorized and supported by money provided under an appropriation recommended by the House Committee on Appropriations and passed by the Congress.

Although the Members of the House have not generally been informed on the subject, the mission was one of a series and part of an established program with which the subcommittee in charge of the appropriation was familiar, and of which it had been fully apprised during this and previous sessions.

The appropriation and the activity had been approved and recommended by the Bureau of the Budget and, like all military expenditures and operations, was under the aegis of the Commander in Chief of the Armed Forces of the United States, for whom all members of the subcommittee have the highest regard and in whose military capacity they have the utmost confidence.

The question immediately arises as to the authority of the subcommittee to recommend an appropriation for such purposes, and especially the failure of the subcommittee to divulge to the House and the country the justifications warranting the expenditure and all details connected with the item at the time it was under consideration on the floor.

The answer of the subcommittee is—absolute and unavoidable military necessity, fundamental national defense.

During the Second World War the United States succeeded in breaking the Japanese naval code. Through this incredible good fortune the U.S. commanders were able to read every order transmitted from Tokyo and all inter-fleet communications. This advance and intimate information had much to do in preparing the way and increasing the effectiveness of our great victory in the battle of Midway which broke the power of Japan in the Pacific. But some incautious member of a congressional committee or its staff leaked the information to a reporter, and 30 minutes after the next edition of his newspaper hit the street Japan changed her naval code and all further advantage was lost.

This appropriation, and its purpose, is justified by honored and established precedent. This subcommittee, including the same personnel with the exception of two members who have since died, was the same committee which for something like 3 years provided in the annual appropriation bills a sum which finally totaled more than \$2 billion for the original atomic bomb. Session after session the money was provided, and the subcommittee visited Oak Ridge where the work was in progress without any Member of the House with the exception of the Speaker of the House being aware of this tremendous project or the expenditure of the money. According to the testimony of all military authorities that bomb ended the war and saved the lives of not less than half a million men who would have had to be sacrificed in the conquest of Japan. No one has ever said that the subcommittee was not justified in expending an amount that eventually aggregated more than the assessed valuation of some of the States of the Union for that purpose.

Espionage has been throughout recorded history an integral part of warfare. Before occupying the Promised Land Moses "by the commandment of the Lord" sent out from the wilderness of Paran 10 men under the direction of Joshua to spy out the land.

And no nation in the history of the world has practiced espionage more assiduously than Russia. The United States and every other allied nation today literally swarms with them. Within the last few weeks we sent to the Federal penitentiary at Atlanta a Russian spy convicted in Federal court who was regularly transmitting information directly to Moscow every night. Their spies stole from us the secret of the atomic bomb. Every Russian embassy and consulate has today time and again the number required for routine diplomatic and consular service. When we were at Oak Ridge we were told there were so many Russian spies there that only by a policy of strictest compartmentalization were they able to maintain the integrity of their work.

The need for espionage in this instance was exceptional and compelling. At the close of the world war in which we had saved Russia from complete sub-

jugation we were surprised to learn that while all other nations were disarming and returning to a peacetime status as rapidly as possible, Russia was feverishly driving her factories and continuing to increase her armament at top speed. Simultaneously they announced that communism and free enterprise could not live in the same world.

Every effort has been made by American administrations to reestablish conditions under which we could discontinue excessive expenditures for armament and divert these vast sums to business and humanitarian purposes. But each year Russia has become more arrogant and threatening and more demanding.

Under our American ideals and system of government, a declaration of war against any nation, however provocative, is unthinkable. Our military authorities have no choice but to give any enemy the advantage of first attack and then depend on massive retaliation for defense. The Communists have taken every advantage of this situation.

In modern warfare surprise is a tremendous advantage. Less than a week before the Communist attack on Korea a congressional committee from this House returning from Seoul reported that permanent peace had been established and the land was returning to prosperity. There was no shadow of war; not the slightest cloud appeared on the horizon. The sudden rush of a vast army of well armed, well trained, and well munitioned Communists across the border made it necessary for us to throw precipitately into battle raw and untrained troops who were wholly unable to protect themselves or hold their positions. And there followed one of the most disastrous periods in the history of American arms.

During the hearings on this appropriation for the last 2 or 3 years, I have each year asked the CIA representative, before the committee, "How could the enemy mobilize an army of such size and accumulate hundreds of tons of supplies and munitions and the transportation facilities necessary for its movement without our learning that such an attack was in prospect?"

And each year we have admonished the Authority, the CIA, that it must meet future situations of this character with effective measures. We told them, "This must not happen again, and it is up to you to see that it does not happen again"; that the American forces must be apprised of any future preparation for attack in time to meet it. And the plan they were following when this plane was taken, is their answer to that demand.

And I want to take advantage of the opportunity to compliment and thank Director Allen W. Dulles and his remarkable corps for the admirable way in which they have met the situation through these later years.

They are entitled to the highest commendation by the Department, the Congress, and the American people.

We cannot permit another Korea. We cannot take the risk of carnage and na-

tional devastation which might involve every American city. We cannot take the risk of the consequences which would follow a similar attack from across the Russian borders. And since the Russians refuse to cooperate in our efforts to establish permanent peace—refuse even to agree to ethical standards of warfare—we have no choice but to protect our Nation and our people through the age-old methods of defense so long in use by the Communists themselves, lest we wake tomorrow, or do not wake tomorrow, as a result of our failure to know in time what they are planning against us.

The world has been appalled by the vicious vindictiveness of Khrushchev's denunciation. He yesterday characterized the policy of the United States as stupid and blundering. His fury is incited by the fact that it is neither stupid nor blundering. On the contrary it has been infinitely successful and effective.

When we have answered his threats—and he has been very free with them on all occasions, even when he was here as our guest in our own country. When we have answered his threats by basing our Strategic Air Command in a position to defend ourselves and our allies, he has boasted that he could stop them at the border. That is why we are now so earnestly developing our submarines so that if he ever is able to neutralize our Strategic Air Command then we will have to take its place a fleet of nuclear-driven missile-firing submarines that will be just as effective a barrier upon him as SAC is today.

His discovery that since 1964, for 4 years, CIA has been sending planes across his border—and as far as 1,300 miles into the interior without his knowing it—is the occasion of this outburst.

It completely disproves his vaunted ability to stop SAC at the border.

The only reason he was able to apprehend even this plane or its pilot was that it developed some unforeseen and unavoidable mechanical or physiological defect, the first in 4 years. He was unable to hit it or to overtake it at its cruising height of 70,000 feet. So in order to leave the impression that he captured this plane he distributed a picture of a pile of rubbish which those who know the plane recognized as absolutely spurious. The plane and the pilot were evidently taken comparatively uninjured. That completely destroys his claims of invulnerability against American attack. So he as usual resorts to subterfuge.

And now the most gratifying feature of the entire incident.

The world has always recognized the remarkable success of our form of government. It has been the wonder and admiration of mankind. But they have said that it was at a great disadvantage in a war with an authoritarian dictatorship.

We have here demonstrated conclusively that free men confronted by the most ruthless and criminal despotism can under the Constitution of the United States protect this Nation and preserve world civilization.

Mr. ANDERSEN of Minnesota. Mr. Chairman, I yield such time as he may

require to the gentleman from New York (Mr. TABER).

Mr. TABER. Mr. Chairman, that was the most magnificent and courageous speech I have heard on this floor in many a day. It is true that we have approached these summit conferences with the idea that each side must be given the right to inspect and examine what the situation might be on the other side. That is the only way we can have peace as the result of these summit conferences. We must have that right. When the leader of Russia refused us that right, the only method we had and the only chance we had was to get out and do just what was being done by this pilot. It was nothing compared to the spy work that was carried on by the Russians—nothing at all. Today, the leader of Russia knows that he could not overcome the United States with the airplanes and missiles that we have available. But we could not know what the proper targets were or know where they were or where they would be unless we had some means of checking up on them—and he left us no course to pursue except the course that we did pursue. That sort of approach was the only approach that we could make. I have served, as has the gentleman from Missouri, on the subcommittee that went into the question of the development of the atomic bomb and went into the questions of supplying the CIA and the other branches of our Government with funds necessary to take care of and protect the United States and its people. For my own part, just so long as I am here, I intend to support that position. We brought in from the Committee on Appropriations, under the leadership of the gentleman from Texas and the gentleman from Michigan (Mr. POW), a military appropriation bill designed to maintain the advantage that we have today over the Soviet. Let us go on and maintain it.

(Mr. WHITTEN asked and was granted permission to revise and extend his remarks.)

Mr. WHITTEN. Mr. Chairman, I yield myself 20 minutes.

Mr. Chairman, I realize that in presenting the agriculture appropriation bill it is somewhat of an anticlimax in view of the wonderful speeches that have been made today. It probably is appropriate that this presentation be preceded by those statements, because many of our problems in the field of agriculture are tied directly into the defense effort of this country.

Back in World War II, and subsequent thereto, the American farmers were asked to produce world without end. They did that magnificently. When the war was over they were not given any refunds or tax reductions. Some \$15 or \$18 billion were given to business after World War II. No such thing was given to the American farmers.

We bring you a bill today where we are embarrassed by its size. We are embarrassed because under the present situation it is our subcommittee that has to pick up the check "after the fact," where we have little if anything to do with the amounts that are involved. In this bill that was submitted to us we

were requested to appropriate the sum of \$4,135,263,190. Our subcommittee was able to reduce that by \$170 million. However, may I say, Mr. Chairman, that in the budget request regular activities were something like one-third of the total. Another one-third was for restoration of the capital impairment of the Commodity Credit Corporation; another more than one-third was reimbursement for special activities, the job of handling which has been assigned to the Commodity Credit Corporation.

I have before me the U.S. News & World Report for last week, which points out that the United States has entered into an agreement with India whereby we will, within the next 4 years, give to India something like \$1,000 million worth of rice and grain. We have seen in the papers the fine statements made as to how wonderful this is on the part of the United States. I am not taking issue with that. But whatever that is, I do not know of anybody who feels it would lead to any agricultural markets in India. However fine it is from a good Samaritan point of view, however good it is from the standpoint of our international policy, our subcommittee will have to sign checks for it in excess of \$300 million, charged up to the American farmers for each of the next 4 years. That is an illustration of what we have before us.

Yes, Mr. Chairman, our subcommittee has a tough job in trying to bring about reductions in the cost, because as many of them are beyond our reach. We on our subcommittees have tried to bring in a bill on which we could all agree. I doubt there is an item in this bill that suits all of us on this subcommittee. But the bill as produced represents the composite views of the whole subcommittee, I believe. I have gone over it very closely, trying to make it as sound as I was capable of doing.

I want to pay tribute to the members of my subcommittee who have worked so hard on this bill. My friends and colleagues on the majority staff, Congressman Fred McMANIS, Bill SPECTER and Fred SANTAPAU have expended fully and have helped in every way. The minority members, Congressman E. CARL ANDERSEN, WALT HOGAN and Don MUMFORD have done their part to bring this bill to the floor in the best possible shape.

Now I would like to discuss some of the major factors with which we had to deal.

FARM INCOME AT LOW LEVEL

The records of the Department show that the Federal Government is now spending far more in the name of agriculture than ever before in history, and yet income from farming in 1968, including soil bank payments, was at the lowest level since before World War II. This is true, despite the fact that national income has increased consistently each year and per capita income for all segments of the population, other than agricultural producers, is at the highest level in the history of the country.

The farm price support program was created in 1933 to preserve and maintain our soil resources, to give the farmers suitable purchasing power and to provide